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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLUCK-U, CORP.,  
a Maryland corporation,

Plaintiff,

vs.

CLUCK UNIVERSITY CHICKEN OF  
PALO ALTO, LP, d/b/a UNIVERSITY  
CHICKEN SANTA CLARA, a California  
limited partnership; CLUCK  
UNIVERSITY CHICKEN OF  
SAN JOSE, LP, a California limited  
partnership; UC RESTAURANT  
MANAGEMENT, INC., a California  
corporation; UNIVERSITY  
CHICKEN, INC., a California corporation;  
UNIVERSITY CHICKEN FRESNO, LP,  
a California limited partnership;  
UNIVERSITY CHICKEN SAN JOSE,  
LLC, a California limited liability company;  
Michael C. Borneo, an individual; and  
DOES 1-50, inclusive.

Defendants.

NO. C07 04986 EMC

COMPLAINT FOR:

- (1) TRADEMARK INFRINGEMENT
- (2) TRADE DRESS INFRINGEMENT
- (3) COPYRIGHT INFRINGEMENT
- (4) TRADE SECRET MISAPPROPRIATION
- (5) UNFAIR COMPETITION
- (6) UNFAIR BUSINESS PRACTICES
- (7) PROMISSORY ESTOPPEL
- (8) UNJUST ENRICHMENT
- (9) INTENTIONAL INTERFERENCE WITH  
PROSPECTIVE BUSINESS ADVANTAGE
- (10) CONCEALMENT
- (11) CONSTRUCTIVE FRAUD

JURY TRIAL DEMANDED

Plaintiff, CLUCK-U, CORP. (hereafter "CLUCK-U") alleges as follows:

JURISDICTION AND VENUE

1. This action arises under 15 U.S.C. §1125 et seq. Jurisdiction is therefore proper under

1 28 U.S.C. §§1331, 1332, and 1338.

2 2. Pendent or supplemental jurisdiction of this Court exists for the state law claims stated  
3 herein, each of which arise out of a common nucleus of operative facts with those from which the  
4 federal claims arise.

5 3. Venue in this judicial district is proper under 28 U.S.C. §1391 (b) and (c). Defendants  
6 have on a continual basis committed the acts alleged below within the Northern District of  
7 California, in business interactions purposefully elicited by defendants with or directed to residents  
8 of said District, including, inter alia, actively soliciting and causing infringing sales within and from  
9 the District, promotion and media advertising within said district, and other use of the infringing  
10 marks which harms plaintiff within said district.

11 THE PARTIES

12 4. Plaintiff CLUCK-U, CORP. is a corporation existing under the laws of Maryland, with  
13 its principal place of business in Maryland.

14 5. Plaintiff is informed and believes, and based thereon alleges, that defendant CLUCK  
15 UNIVERSITY CHICKEN OF PALO ALTO, L.P. d/b/a UNIVERSITY CHICKEN SANTA  
16 CLARA, is a California limited partnership, having its principal place of business in Palo Alto,  
17 California.

18 6. Plaintiff is informed and believes, and based thereon alleges, that defendant CLUCK  
19 UNIVERSITY CHICKEN OF SAN JOSE, L.P., is a California limited partnership, having its  
20 principal place of business in Woodside, California.

21 7. Plaintiff is informed and believes, and based thereon alleges, that defendant  
22 UNIVERSITY CHICKEN FRESNO, L.P., is a California limited partnership, having its principal  
23 place of business in Fresno, California.

24 8. Plaintiff is informed and believes, and based thereon alleges, that defendant  
25 UNIVERSITY CHICKEN SAN JOSE, LLC, is a California limited liability company, having its  
26 principal place of business in San Francisco, California.

27 9. Plaintiff is informed and believes, and based thereon alleges, that defendant UC  
28 RESTAURANT MANAGEMENT, INC., is a California corporation, having its principal place of

1 business in Woodside, California.

2 10. Plaintiff is informed and believes, and based thereon alleges, that defendant  
3 UNIVERSITY CHICKEN, INC., is a California corporation, having its principal place of business  
4 in Woodside, California.

5 11. Plaintiff is informed and believes, and based thereon alleges, that defendant Michael C.  
6 Borneo (hereafter "Borneo"), is a natural person and resident of Fair Haven, New Jersey.

7 12. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as  
8 DOES 1 through 50, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff  
9 will amend this complaint when the true names and capacities of said defendants have been  
10 ascertained. Plaintiff is informed and believes and thereon alleges that said DOES, and each of  
11 them, are legally responsible in some manner for the events and happenings referred to herein, and  
12 proximately caused or contributed to the injuries and damages to Plaintiff as herein alleged.

13 13. Plaintiff is informed and believes and thereon alleges that each and every defendant  
14 was the agent and employee of each of the remaining defendants, and in doing the things herein  
15 alleged acted within the course and scope of said agency and employment.

16 14. Plaintiff is informed and believes and thereon alleges that there exists, and at all times  
17 herein mentioned there has existed, a unity of interest and ownership between defendants, defendant  
18 business entities: CLUCK UNIVERSITY CHICKEN OF PALO ALTO, L.P., d/b/a UNIVERSITY  
19 CHICKEN SANTA CLARA; CLUCK UNIVERSITY CHICKEN OF SAN JOSE, L.P.,  
20 UNIVERSITY CHICKEN FRESNO, L.P.; UNIVERSITY CHICKEN SAN JOSE, LLC;  
21 UNIVERSITY CHICKEN, INC.; UC RESTAURANT MANAGEMENT, INC. (hereinafter  
22 collectively referred to as "Defendant Business Entities"), Borneo and Does 1-50 (hereinafter  
23 collectively referred to as "Defendants") such that any individuality and separateness between  
24 defendant Borneo and the Defendant Business Entities, and in and among Defendant Business  
25 Entities, and Does 1-50 have ceased, and Defendant Business Entities are the alter ego of the named  
26 individual defendant and of each other in that:

- 1 a) Defendant Business Entities were conceived, intended, and used by said defendants  
2 as a device to avoid individual liability and for the purpose of substituting a  
3 financially insolvent company in the place of said defendants.  
4
- 5 b) Defendant Business Entities are, and at all times herein mentioned were, so  
6 controlled by said individual defendant such that the monies and business activities  
7 of the Defendant Business Entities and of said individual defendant are commingled  
8 and intermingled; the credit of one is used for the credit of the other; the obligations  
9 of each individual defendant and of the Defendant Business Entities are paid by one  
10 another; and as a result of the foregoing, Defendant Business Entities are the  
11 instrumentality, conduit, adjunct, and alter ego of one another and of the individual  
12 defendants.  
13
- 14 c) Defendant Business Entities are, and at all times mentioned herein were, a mere shell,  
15 instrumentality, and conduit through which defendant Borneo and Does 1-50 carried  
16 on business operations in the name of said business entities exactly as they had  
17 conducted it prior to formation, exercising complete control and dominance of such  
18 business entities to such an extent that any individuality or separateness of Defendant  
19 Business Entities and defendants, Borneo, and Does 1-50 does not, and at all times  
20 mentioned herein did not, exist.  
21
- 22 d) Defendant Business Entities are, and at all times herein mentioned were, controlled,  
23 dominated, and operated by defendants Borneo and Does 1-50 as their individual  
24 businesses and alter egos, in that the activities and business of the defendants were  
25 carried out without application to prescribed entity formalities, proceedings, and  
26  
27  
28

1 directorship approval.

2 e) Defendants, and each of them, conducted business on the respective premises as a  
3 single entity without definition of any separateness between said defendants.

4 15. Adherence to the fiction of the separate existence of Defendant Business Entities as  
5 entities distinct from defendants Borneo and Does 1-50 would permit an abuse of the corporate  
6 privilege and would sanction said defendants' fraud upon plaintiff.

7  
8 FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

9 16. From and after January 1, 1985, and continuing to date, plaintiff has been doing business  
10 in the United States, using in commerce the mark "CLUCK-U-CHICKEN" and related marks as a  
11 trademark in connection with fast food restaurant services.

12 17. Plaintiff has acquired trademark rights to the mark "CLUCK-U CHICKEN," and related  
13 marks, both at common law from and after said date and further by virtue of registrations and  
14 applications for registration with the United States Patent and Trademark Office, including, inter  
15 alia, federal Trademark Registration Application Serial No. 77/285,875.

16 18. Plaintiff has acquired trademark rights to the mark "UNIVERSITY CHICKEN," and  
17 related marks, both at common law from and after said date and further by virtue of registrations  
18 with the United States Patent and Trademark Office, including, inter alia, federal Trademark  
19 Registration No. 3137573, a true copy of which is attached hereto as Exhibit A.

20 19. Plaintiff has acquired other intellectual property, including but not limited to trademark,  
21 copyright, trade secret and trade dress rights by virtue of its use in commerce of various menus,  
22 menu item names, recipes, logos, trade names, restaurant decor and styles of doing business.

23 20. Plaintiff has extensively advertised and promoted said marks and other intellectual  
24 property. Moreover, plaintiff has invested substantial time, energy and resources to develop said  
25 marks and intellectual property. Each of plaintiff's marks are strong marks, being inherently  
26 arbitrary, fanciful, distinctive or suggestive.

27 21. From and after December, 2006, Plaintiff became aware that Defendants, and each of  
28 them, had been engaged in use in commerce of the confusingly similar mark "UNIVERSITY

1 CHICKEN” while also continuing to use the mark “CLUCK UNIVERSITY CHICKEN” and related  
2 marks in connection with the promotion, advertising, offering for sale, sale and licensing for goods  
3 and services or other use in commerce as an indicator of origin for fast food restaurant services.

4 22. Plaintiff is informed and believes, and based thereon alleges, that from and after June  
5 26, 2002, defendants Borneo, CLUCK UNIVERSITY CHICKEN OF PALO ALTO, L.P., d/b/a  
6 UNIVERSITY CHICKEN SANTA CLARA; CLUCK UNIVERSITY CHICKEN OF SAN JOSE,  
7 L.P., UNIVERSITY CHICKEN FRESNO, L.P.; UNIVERSITY CHICKEN SAN JOSE, LLC;  
8 UNIVERSITY CHICKEN, INC.; and UC RESTAURANT MANAGEMENT, INC. continued to use  
9 in the conduct of business operations plaintiff’s copyrighted images and text, trade dress, and trade  
10 secret and proprietary confidential information without plaintiff’s permission.

11 23. Plaintiff thereafter demanded that defendants cease such use, and received assurances  
12 from defendants that they had done so.

13 24. Plaintiff is informed and believes, and based thereon alleges that defendant Borneo  
14 affirmatively misrepresented to plaintiff the fact that defendants would no longer continue to use  
15 plaintiff’s intellectual property. Plaintiff is informed and believes, and based thereon alleges that  
16 said defendants continued or resumed their ongoing use of plaintiff’s intellectual property, without  
17 plaintiff’s awareness, all to plaintiff’s injury. In or about December, 2006, Plaintiff learned that  
18 defendants, and each of them, had commenced operations in Fresno and San Jose in addition to their  
19 original location in Santa Clara. Plaintiff only became aware of the above-alleged subsequent misuse  
20 by defendants, contrary to prior assurances, on or about December, 2006.

## 21 COUNT I

### 22 (Trademark Infringement)

23 25. As and for a cause of action against defendants, and each of them, plaintiff adopts,  
24 realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs  
25 1 through the immediately preceding paragraph as though fully set forth.

26 26. Plaintiff is informed and believes and based thereon alleges that defendants, and each  
27 of them have created a likelihood of confusion with plaintiff’s marks in the relevant marketplace  
28



1 as to source, sponsorship, affiliation, or authorization to plaintiff's damage, thereby constituting  
2 infringement of plaintiff's registered and unregistered trademarks and service marks.

3 27. As a proximate result of defendants' above-described conduct, plaintiff is informed and  
4 believes and based thereon alleges that it has been damaged in an unascertained amount. Plaintiff  
5 will seek leave to amend this Complaint when such damages have been ascertained.

6 28. At all material times, defendants acted in bad faith, oppressively and maliciously toward  
7 plaintiff, with willful intent for the purpose of trading upon plaintiff's goodwill and business  
8 reputation, with knowledge of the lack of right to do so, and with intent to injure plaintiff, thereby  
9 entitling plaintiff to treble damages against defendants, and each of them, in an unascertained  
10 amount. Plaintiff will seek leave to amend this Complaint when such damages have been  
11 ascertained.

12 29. The above described acts of defendants have caused and are continuing to cause  
13 irreparable injury to plaintiff, for which plaintiff has no adequate remedy at law, and defendants will  
14 continue to do so unless enjoined by this Court.

15 WHEREFORE, plaintiff prays for judgment as hereafter set forth.

16 COUNT II

17 (Trade Dress Infringement)

18 30. As and for a cause of action against defendants, and each of them, plaintiff adopts,  
19 realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs  
20 1 through the immediately preceding paragraph as though fully set forth.

21 31. On information and belief, plaintiff alleges that at all relevant times defendants, and each  
22 of them, have infringed plaintiff's distinctive restaurant trade dress by offering restaurant services  
23 which are confusingly similar to those offered by plaintiff.

24 32. On information and belief, plaintiff alleges that defendants, and each of them, will  
25 continue to infringe said trade dress as alleged herein, unless restrained or enjoined by the Court, all  
26 to the loss and injury of plaintiff.

27 33. On information and belief, plaintiff alleges that defendants, and each of them, have  
28 enjoyed sales and revenues by the alleged acts of infringement, which have deprived plaintiff of the

1 same, causing plaintiff additional injury and loss of profits in an unascertained amount. Plaintiff will  
2 seek leave to amend this Complaint when the same has been ascertained.

3 WHEREFORE, plaintiff prays for judgment as hereafter set forth.

4 COUNT III

5 (Copyright Infringement)

6 34. As and for a cause of action against defendants, and each of them, plaintiff adopts,  
7 realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs  
8 1 through the immediately preceding paragraph as though fully set forth.

9 35. On information and belief, plaintiff alleges that defendants, and each of them, have  
10 infringed one or more of plaintiff's copyrights by displaying in its restaurants during the course of  
11 business operations and on the internet at [www.universitychicken.com](http://www.universitychicken.com) images to which the plaintiff  
12 owns copyrights, without plaintiff's permission. Said copyrighted images have been displayed at  
13 defendants' restaurants and in connection with defendants' internet-based advertising and  
14 promotions.

15 36. On information and belief, plaintiff alleges that defendants have further infringed one  
16 or more of plaintiff's copyrights by copying text and other materials created by plaintiff and to which  
17 plaintiff owns copyrights, without plaintiff's permission. Said text and other materials have been  
18 displayed at defendants' restaurants and in connection with defendants' internet-based advertising  
19 and promotions.

20 37. Plaintiff intends to file applications to register each of said copyrights and will seek  
21 leave of this Court to amend this Complaint once said registrations issue.

22 38. On information and belief, plaintiff alleges that the aforesaid acts were committed with  
23 willful intent for the purpose of trading upon plaintiff's goodwill and business reputation, with  
24 knowledge of the lack of right to do so, and said acts have caused and continue to cause plaintiff  
25 damage.

26 WHEREFORE, plaintiff prays for judgment as hereafter set forth.

27 COUNT IV

28 (Trade Secret Misappropriation)



39. As and for a cause of action against defendants, and each of them, plaintiff adopts, realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs 1 through the immediately preceding paragraph as though fully set forth.

40. Over the years, and at substantial expense, plaintiff has developed valuable proprietary, confidential trade secret information in relation to its business methods and operations in the provision of fast food restaurant services.

41. Defendants had access to and utilized plaintiff's proprietary trade secret information which was divulged to and acquired by defendant Borneo in confidence for use solely in the business of Cluck-U-Chicken during the course of business operations pursuant to the agreement in effect concerning said operations. Defendants and others have at all time been and remain under written and implied-in-law obligations and duties to hold and use such information only for the benefit of plaintiffs and plaintiff's predecessor in interest, and not to otherwise use or disclose such information.

42. On the basis of information and belief, plaintiff alleges that defendants misappropriated and have continued their misappropriation of plaintiff's trade secrets and confidential information.

43. As a direct and proximate result of said misappropriation, plaintiff has been damaged and defendant has been unjustly enriched in an uncertain amount, and said damages will continue without adequate remedy at law unless defendant is enjoined by the Court.

44. On the basis of information and belief, plaintiff alleges that defendants' misappropriation of plaintiff's trade secrets was done willfully and maliciously, such that plaintiff's damages should be trebled and its attorneys' fees and costs awarded.

WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

COUNT V

(Federal Unfair Competition under 15 U.S.C. §1125(a))

45. As and for a cause of action against defendants, and each of them, plaintiff adopts, realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs 1 through the immediately preceding paragraph as though fully set forth.

46. The foregoing actions constitute unfair competition, in violation of 15 U.S.C. §1125(a).

1 47. As a direct and proximate result of said unfair competition, plaintiff has been damaged  
2 and defendant has been unjustly enriched in an uncertain amount, and said damages will continue  
3 without adequate remedy at law unless defendant is enjoined by the Court.

4 48. On the basis of information and belief, plaintiff alleges that defendants' actions were  
5 done willfully and maliciously, such that plaintiff's damages should be trebled and its attorneys' fees  
6 and costs awarded.

7 WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

8 COUNT VI

9 (State Unfair Business Practices under Cal. Bus. & Prof. Code §17200, et seq.)

10 49. As and for a cause of action against defendants, and each of them, plaintiff adopts,  
11 realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs  
12 1 through the immediately preceding paragraph as though fully set forth.

13 50. The actions of defendants as described hereinabove constitute unfair business practices  
14 under California Bus. & Prof. Code §17200, et seq. Plaintiff has suffered injury in fact by  
15 defendants' actions.

16 51. As a direct and proximate result of said unfair competition, plaintiff has been damaged  
17 and defendant has been unjustly enriched in an uncertain amount, and said damages will continue  
18 without adequate remedy at law unless defendant is enjoined by the Court.

19 WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

20 COUNT VII

21 (Promissory Estoppel)

22 52. As and for a cause of action against defendants, and each of them, plaintiff adopts,  
23 realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs  
24 1 through the immediately preceding paragraph as though fully set forth.

25 53. On information and belief, plaintiff alleges that defendant Borneo made promises and  
26 representations to the effect that defendants would cease to operate using plaintiff's intellectual  
27 property. Defendants, and each of them, knew and intended that plaintiff would rely upon these  
28 representations and plaintiff had the right to believe that such representations were, in fact, true.

1       54. On information and belief, plaintiff alleges that at the time the representations were made  
2 that defendants, and each of them, were fully advised and knew that the representations were not  
3 made in good faith.

4       55. On information and belief, plaintiff alleges that at the time of the representations made  
5 by defendant Borneo, plaintiff had no notice of the true facts to put plaintiff on notice that plaintiff  
6 could not justifiably rely upon defendant Borneo's representations. Defendants knew or should have  
7 known of plaintiff's reliance upon defendant Borneo's representations. Plaintiff was induced to rely  
8 upon those representations to its detriment failing to take action against defendants for unauthorized,  
9 continued use of plaintiff's intellectual property and the continuing misappropriation by defendants  
10 of plaintiff's trade secret and confidential proprietary information.

11       56. On information and belief, plaintiff alleges that as a direct and proximate result of  
12 defendants' failure to comply with the representations and the promises of defendant Borneo, that  
13 plaintiff sustained substantial damages as herein alleged.

14       57. On information and belief, plaintiff alleges that defendant Borneo is estopped to deny  
15 his promises, conduct and representations and defendants are estopped from asserting any right to  
16 continue the unauthorized use of plaintiff's intellectual property.

17       58. As a direct and proximate result of said unfair competition, plaintiff has been damaged  
18 and defendant has been unjustly enriched in an uncertain amount, and said damages will continue  
19 without adequate remedy at law unless defendant is enjoined by the Court.

20       59. On the basis of information and belief, plaintiff alleges that defendants' actions were  
21 done willfully and maliciously, such that plaintiff's damages should be trebled and its attorneys' fees  
22 and costs awarded.

23       WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

24                               COUNT VIII

25                               (Quantum Meruit)

26       60. Plaintiff has provided to defendants work, labor and services which have been rendered  
27 within the statutory applicable period of time.

1       61. On information and belief, plaintiff alleges that plaintiff has devoted time, energy and  
2 effort and conferred value in the form of allowing use of the above-referenced intellectual property  
3 for the benefit of defendants, and defendants as a result are required to pay at least the reasonable  
4 value of such services, for which defendants have failed to pay.

5       62. On information and belief, plaintiff alleges that defendants have been unjustly enriched  
6 and that the reasonable value of unjust enrichment is in an amount heretofore unknown to plaintiffs.  
7 Plaintiff will seek to amend this complaint to state the proper amount when such information is  
8 ascertained.

9       WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

10                               COUNT IX

11                               (Interference with Prospective Business Advantage)

12       63. As and for a cause of action against defendants, and each of them, plaintiff adopts,  
13 realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs  
14 1 through the immediately preceding paragraph as though fully set forth.

15       64. By the aforesaid acts, defendants are interfering with plaintiff's prospective business  
16 advantage and advantageous relationships with actual and prospective licensees without justification,  
17 thereby causing damage to plaintiff.

18       65. On information and belief, plaintiff alleges that the aforesaid acts were committed with  
19 willful intent for the purpose of trading upon plaintiff's goodwill and business reputation, with  
20 knowledge of the lack of right to do so, and said acts have caused plaintiff damage.

21       WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

22                               COUNT X

23                               (Concealment)

24       66. As and for a cause of action against defendants, and each of them, plaintiff adopts,  
25 realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs  
26 1 through the immediately preceding paragraph as though fully set forth.

27       67. On information and belief, plaintiff alleges that defendants engaged in a course of  
28 conduct designed to conceal from plaintiff the material information described herein.

1 68. On information and belief, plaintiff alleges that the concealment includes, but is not  
2 limited to, the true intentions of defendants as heretofore described.

3 69. On information and belief, plaintiff alleges that this course of conduct of concealment  
4 by defendants was designed to create a false state of affairs, and to induce plaintiff to forgo further  
5 enforcement of its intellectual property rights and the protection of its trade secret and confidential  
6 proprietary information.

7 70. On information and belief, plaintiff alleges that plaintiff was ignorant of defendants'  
8 concealment of material facts, and that plaintiff could not, in the exercise of reasonable diligence,  
9 have discovered defendants' concealment. Plaintiff relied upon the acts and conduct of defendants  
10 in creating a false impression of a state of affairs as hereinbefore alleged. Had plaintiff known of  
11 the actual concealment of defendants, plaintiff would not have undertaken such reliance.

12 71. On information and belief, plaintiff alleges that as a result of defendants' concealment,  
13 plaintiff has been damaged. Plaintiff will seek leave to amend this Complaint to allege the true  
14 nature and extent of the damages when ascertained.

15 72. On information and belief, plaintiff alleges that the conduct of defendants in concealing  
16 material facts was malicious, wanton and willful and justifies an award of punitive damages.

17 WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

18 COUNT XI

19 (Constructive Fraud)

20 73. As and for a cause of action against defendants, and each of them, plaintiff adopts,  
21 realleges and incorporates by reference all of the allegations contained hereinabove in paragraphs  
22 1 through the immediately preceding paragraph as though fully set forth.

23 74. On information and belief, plaintiff alleges that as a result of the relationship existing  
24 between plaintiff and defendants, and conduct of the parties, that defendants owed a duty to plaintiff  
25 to, among other things, refrain from making false assurances of non-use of plaintiff's intellectual  
26 property and to deal in good faith with plaintiff.

27 75. On information and belief, plaintiff alleges that in breach of the duty owed by defendants  
28 to plaintiff, defendants gained an advantage as hereinbefore alleged by intentionally misleading

1 plaintiff by promising to cease to operate under the Cluck University Chicken name and to cease  
2 using plaintiff's intellectual property upon which promise plaintiff relied to its prejudice as  
3 hereinbefore alleged.

4 76. On information and belief, plaintiff alleges that the acts and conduct of defendants  
5 constitute constructive fraud as that term is defined in California Civil Code section 1573.

6 77. On information and belief, plaintiff alleges that as a result of the constructive fraud of  
7 defendants that plaintiff has been damaged. Plaintiff will seek leave to amend this Complaint to  
8 allege the true nature and the extent of the damages when ascertained.

9 78. On information and belief, plaintiff alleges that the acts and conduct of defendants which  
10 constitute constructive fraud were malicious, wanton and willful and justify an award of punitive  
11 damages.

12 WHEREFORE, plaintiff prays for judgment in their favor and against defendants as follows:

13 1. An award of monetary damages, including recovery of defendant's profits and  
14 the damages sustained by plaintiff, arising from the acts of defendants complained of herein,  
15 according to proof;

16 2. An award of trebled monetary damages, according to proof;

17 3. An award of prejudgment interest from the date of each wrongful act and  
18 recovery of plaintiff's attorneys fees and costs;

19 4. Injunctive relief against defendants, and each of them, their officers, agents,  
20 employees, servants, attorneys, representatives, successors and assigns, and each of them and all  
21 others in privity and acting on behalf of or in concert therewith, from using as a trade name,  
22 trademark, domain name, telephone number designation, service mark or otherwise referring to itself  
23 or their goods or services, comprising or containing the words: CLUCK UNIVERSITY CHICKEN,  
24 CLUCK-U CHICKEN, UNIVERSITY CHICKEN, [www.universitychicken.com](http://www.universitychicken.com), C.U., C.U.C., U.C.,  
25 or any acronym of similar appearance, sound or import, and, further, to refrain from use of plaintiff's  
26 copyright, trade secret and trade dress rights by virtue of its use in commerce of various menus,  
27 menu item names, recipes, logos, trade names, restaurant decor and styles of doing business.  
28

1           5. A judicial declaration that plaintiff shall have the exclusive right to use the marks  
2 and other intellectual property set forth herein and an order that defendants transfer all right, title and  
3 interest in and to all of such marks and domain names to plaintiff;

4           6. An award of plaintiff's attorneys' fees and costs; and

5           7. Any and all further relief as may be deemed fit and proper.

6                           JURY TRIAL DEMAND

7           Pursuant to Fed R. Civ. P. 38(b), 5(d) and Local Rule 3-6, plaintiff demands a jury  
8 trial of all issues triable by jury.

9           Dated: September 24, 2007.

10                           Respectfully submitted,

11                           LARIVIERE, GRUBMAN & PAYNE, LLP

12  
13           By: 

14                           Alan E. Engle

15                           Attorney for Plaintiff  
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**Exhibit A**

**Int. Cl.: 43**

**Prior U.S. Cls.: 100 and 101**

**United States Patent and Trademark Office**

**Reg. No. 3,137,573**

**Registered Sep. 5, 2006**

**SERVICE MARK  
PRINCIPAL REGISTER**

**UNIVERSITY CHICKEN**

CLUCK-U CORPORATION (MARYLAND COR-  
PORATION)

4061 POWDER MILL ROAD

BELTSVILLE, MD 20704

FOR: RESTAURANT SERVICES, IN CLASS 43  
(U.S. CLS. 100 AND 101).

FIRST USE 0-0-1988; IN COMMERCE 0-0-1988.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "CHICKEN", APART FROM THE  
MARK AS SHOWN.

SER. NO. 76-608,557, FILED 8-20-2004.

MICHAEL TANNER, EXAMINING ATTORNEY